



Belfast

Enforcement Strategy

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www.belfastcity.gov.uk/LDP



Belfast
City Council



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1 Introduction

- 1.1 The Belfast Enforcement Strategy (BES) relates to Belfast City Council's planning enforcement service and describes the purposes of the service and how it will be delivered.
- 1.2 Belfast City Council places great importance on protecting our communities, natural habitats and built heritage from unauthorised development that causes harm or shows a disregard for the planning system. To ensure that we can take action when it is right to do so, the Council provides a planning enforcement service which investigates complaints and provides expert advice on enforcement matters.
- 1.3 The Council's functions as the planning authority are set out in the Planning Act (Northern Ireland) 2011. The Council's Planning Section administers most of these planning functions including the discretionary power to take action against breaches of planning control.
- 1.4 Although planning enforcement is a discretionary function, it is recognised that the integrity of the development management process depends on the Council's commitment to take effective action against unauthorised development. This document sets out how the Council will deal with breaches of planning control.
- 1.5 The BES explains the Council's policy and procedure for dealing with reports of alleged breaches of planning control and handling planning enforcement issues. It identifies local priorities for enforcement action so that the Council's enforcement resources are put to the best use in dealing with breaches of planning control. The BES will therefore ensure that officers, councillors and the general public will be aware of the approach to planning enforcement and provides greater certainty for all parties engaged in the development process.

2 General approach to planning enforcement

- 2.1 The purpose of planning enforcement is to ensure that development is undertaken in accordance with regulations and planning permissions and, where it is undertaken without permission, to ensure that harmful development is dealt with effectively.
- 2.2 Development requiring planning permission includes:
 - Most types of building works.
 - Engineering works.
 - Material changes of use to land including buildings.

Planning Enforcement cannot take action if there is no breach of planning control, or the dispute concerns boundary disputes, covenants, deeds or civil issues.

- 2.3 Under the provisions of the Planning Act (Northern Ireland) 2011 the Council has discretionary powers to take enforcement action when it considers it expedient to do

so, having regard to the provisions of the local development plan and any other material considerations. The Council is committed to resolving all cases involving unauthorised development and using its formal enforcement powers in relevant cases.

- 2.4 In exercising discretion, the Council will be mindful of its duty to enforce planning legislation and to ensure that development is managed in a proactive and proportionate manner. In determining the most appropriate course of action in response to alleged breaches of planning control, the Council will take into account the extent of the breach and its potential impact on the environment. Any decision to proceed with enforcement action will also be informed by case law, precedents and appeal decisions.
- 2.5 The purpose of the Strategy is to:
- Explain the Council's key objectives for the enforcement of planning control;
 - Explain how breaches of planning control will be investigated;
 - Set out the Council's priorities for investigating breaches of planning control.

3 Key objectives for planning enforcement

- 3.1 The Council's key objectives for planning enforcement are:
- To bring unauthorised activity under control;
 - To remedy the undesirable effects of unauthorised development including, where necessary, the removal of unacceptable building works and the cessation of unacceptable uses; and
 - To take legal action, where necessary, against those who ignore or flout planning legislation.
- 3.2 The Council is committed to securing these objectives in order to ensure that the credibility of the Council as the planning authority and the integrity of the planning system are not undermined.

4 Legislation and Policy

- 4.1 The Planning Act (Northern Ireland) 2011 provides the statutory basis for most planning enforcement matters, including trees. Tree enforcement is also governed by the Planning (Trees) Regulations (Northern Ireland) 2015. The statutory powers for Listed Building enforcement are provided principally by the Planning (Listed Buildings) Regulations (Northern Ireland) 2015.

- 4.2 The Belfast Local Development Plan 2035 (LDP) was adopted by Belfast City Council on 2 May 2023. It sets out the City's vision and strategy for the sustainable growth of the city for the period up to 2035. It is the City's key statutory strategic planning document, guiding decisions on all development to 2035 and is therefore fundamental in guiding decisions relating to breaches of planning control.

5 Principles of Good Enforcement

- 5.1. The integrity of the planning system and the service for Belfast depends on the City Council's readiness to take enforcement action when it is appropriate to do so. Planning laws and policies are designed to control the development and use of land and buildings in the public interest; they are not meant to protect the private interests of one person against the activities of another.
- 5.2. The City Council is committed to providing an effective planning enforcement service. In order to undertake effective investigations, it is essential that there is cooperation between the City Council departments and other agencies, such as the Police, the Northern Ireland Environment Agency, the Department for Infrastructure (DfI) and the Health and Safety Executive.
- 5.3. The City Council will continue to develop these relationships in the future in order to make best use of all our available resources. The City Council will not condone wilful breaches of planning control and will exercise its discretion to take enforcement action if it is considered expedient to do so.
- 5.4. The City Council will investigate all reports about alleged breaches of planning control, except those reported anonymously, to determine whether a breach has as a matter of fact occurred, and if it has, will then determine the most appropriate course of action, mindful to the basic principles of enforcement:
- **Proportionality** - enforcement action will be proportionate to the risks and seriousness of any breach, including any actual or potential harm caused by the breach. Most unauthorised development is not illegal.
 - **Helpfulness** - where it should be possible for breaches of control to be quickly remedied, officers will give owners/developers a chance to quickly rectify matters. All correspondence will identify the officer dealing with the matter and give contact details. Officers will not tolerate abusive language or aggressive behaviour.
 - **Targeting of enforcement action** - focusing enforcement action on the most serious risks and recognise that it is not possible to prioritise all issues of non-compliance or to take action against breaches causing no significant harm.
 - **Consistency of enforcement approach** - consistency does not mean uniformity, however a similar approach will be taken in similar circumstances with the appropriate exercise of individual discretion and professional judgement.

- **Transparency of how enforcement operates and what can be expected** - where non-compliance has been identified, officers will explain to the contravener what must be done to remedy the breach, clearly explain the reasoning behind their decision, give reasonable timescales for compliance and provide clear instructions of what will happen if they do not comply.
- **Accountability for our actions** - members of the public and businesses through the BES will know what to expect when an officer visits and how to raise any complaints they may have.

6 What is a breach of planning control?

- 6.1. A breach of planning control occurs when building works or a material change of use of land or a building takes place without planning permission. In most cases, it is not an offence to undertake development without permission, but the Council has powers to require these breaches to be put right. We can do this by requiring the removal of unauthorised development, by requiring changes to be made to the development, or by giving the development approval if we think it is acceptable.
- 6.2. Examples of a breach of planning control include:
 - Building works or the use of land without the required planning permission
 - Not building in accordance with the approved plans that form part of a planning permission - In some cases this can result in the whole development being deemed as unauthorised.
 - Failure to comply with conditions following a grant of planning permission. This can also result in the whole development being deemed unauthorised.
 - The carrying out of building, mining, engineering or other operations in, on, or over land;
 - Making any material change of use of any building or land. This could involve such matters as
 - the unauthorised extension or erection of a building for a different use; or
 - the material change of use of land or a building; or
 - the display of unauthorised advertisements;
 - Works to a listed building or properties in a conservation area without the required consent. Most works to Listed Buildings require consent and it is a criminal offence to carry out works without such consent;
 - Removing or lopping trees protected by a Tree Preservation Order or in a Conservation Area. It is an offence to carry out unauthorised work to trees protected by a Tree Preservation Order.
 - Display of an advertisement without the benefit of advertisement consent.

7 What is not a breach of Planning Control?

7.1. Conversely, there have been complaints that the Council have received in respect of land which have not been breaches of planning control and therefore enforcement action could not be taken. These unenforceable complaints include:

- Where development is 'permitted development', i.e. does not require planning permission
- Advertisements that are not subject to deemed or express consent requirements under the Planning (Control of Advertisements) Regulations (Northern Ireland) 2015, or benefit from advertisement consent or immunity under the 10 year rule;
- Where development is certified as 'Lawful Development' by virtue of the period of time (5 years) it has been demonstrated to have been in place;
- Works that benefit from planning permission;
- Internal works to a building (with the exception of a listed building and most buildings in conservation areas and buildings with Areas of Townscape Character;
- Homeworking, such as childminding (numbers permitting) or the use of a room by the householder as an office, where the residential use remains the primary use and there is no adverse impact;
- Parking commercial vehicles on the highway;
- Blocking an access, public road or right of way;
- Works that are not considered to be development as defined under section 23 of the Planning Act 2011;
- Loss of an individual's view or trespass onto someone else's land;
- Boundary disputes/ overhanging/encroachment/ damage causes by adjacent development;
- Clearing land of overgrowth, bushes etc. (provided they are not protected);
- Breaches of deeds or covenants;
- Loss of value to a neighbouring property; and
- Competition to another business.

7.2 It may be possible to address issues such as these by way of civil action, although this is a matter for the individual to pursue and is not an area where the City Council would be involved.

8 Discretion and Harm

- 8.1 **Discretion** - Once a breach of planning control has been identified, the extent of the breach must be assessed to establish what, if any, action should be taken to remedy the breach and whether it is considered expedient to do so. It is at the City Council's discretion to use enforcement powers.
- 8.2 In accordance with the 2011 Act 'expediency' is assessed with reference to national and local planning policies and to any other material considerations (e.g. amenity, design).
- 8.3 If it is likely that the unauthorised development would have been approved, had planning permission been initially applied for, taking formal enforcement action would be unnecessary. Taking enforcement action must be in the public interest. Enforcement action will not be taken simply because a breach has occurred.
- 8.4 **Expediency** - In cases where it has been established that a breach of planning control has occurred at the initial stage, the Planning Enforcement Officer will undertake an assessment of expediency to determine the next course of action that should be taken.
- 8.5 An expediency test will usually involve the Planning Enforcement Officer assessing:
- Whether the breach is in accordance with the policies of the Local Plan.
 - The breach against any other material planning considerations.
 - Whether had a planning application been submitted before the development occurred, would permission likely to have been granted.
 - Whether the breach unacceptably affects public amenity.
 - Whether the breach unacceptably affects any existing land, use or buildings which merit protection in the public interest.
 - Whether action would be proportionate with the breach to which it relates.
 - Whether action would be in the public interest.
- 8.6 **Significant harm** that results from a breach of planning control could concern residential amenity or highway safety issues. Examples of significant harm could include noise nuisance, loss of daylight or privacy, or danger from increased traffic flows.
- 8.7 This means that the City Council may not take formal enforcement action in all cases where a breach of planning control has been identified. It is part of the normal duties/responsibilities of the investigating Enforcement Officers to ensure decisions not to pursue formal enforcement action can be properly justified having regard to

the Local Enforcement Plan and the LDP. There is no right to appeal the City Council decision not to take enforcement action. However, if someone is dissatisfied with the decision making, they can proceed to follow the City Council's Corporate Complaints Procedure, details of which are towards the end of the document.

- 8.8 Due to the complex nature of planning enforcement and to ensure that your complaint is adequately considered, the time period for a response is likely to be extended from the time period indicated in the corporate complaints procedure.

9 What happens if we are told about a breach of planning control?

- 9.1 If you believe that a breach of planning control has occurred, you should notify the Council's Planning Enforcement Team at [planning enforcement](#). You will need to:

- Provide your name, either postal or email address and contact number;
- Provide the address of the alleged breach;
- Detail exactly what has happened and when it first occurred;
- Provide the name and address of the landowner(s) and / or the person responsible for carrying out the works, if known.

- 9.2 Your personal details will remain confidential unless we need to use your evidence to support our case, for example, if the matter went to court, however, we would contact you beforehand.

10 How do we respond to the information we are given?

- 10.1 We will investigate all alleged breaches (unless considered vexatious or anonymous) of planning control reported to the City Council via the online complaints form. When a complaint is received, we will:-

- Register the complaint where possible within 3 working days and provide an acknowledgement and reference number with a named officer as the main point of contact;
- Always keep personal details confidential, unless required to disclose as part of court proceedings;
- Actively pursue the complaint where it is in the public interest to do so.

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- Record the actions taken and the decisions made at the different stages of the investigation;
- Check the planning history of the site;
- Find out the details of the landowner;
- Establish the identity of the person(s) responsible for carrying out the breach (if not the landowner);
- Visit the site in a timely manner having regard to our priorities;
- Establish whether or not we believe there is a breach of planning control;
- In cases where there may be a technical breach of planning control, but the harm caused is not sufficient to warrant formal action before closing the case we will notify the complainant of the decision and reason for not taking formal action;
- Where appropriate, we will negotiate with those responsible for any breach of planning control, allowing them the opportunity to resolve the matters of concern before serving a formal notice unless the breach is so serious it warrants immediate action or where negotiations become protracted with no real likelihood of successful resolution;
- Issue a Planning Contravention Notice (a formal request for information) if necessary.

10.2 After investigation we may decide that there has not been a breach of planning control, and in such circumstances, we will close the case and notify the complainant of the basis for the decision. We will not re-open the case, however if there is a significant new piece of information or change on site, we may open a new case. Please note that there is no right of appeal to this decision. We may also decide that although there has been a breach of planning control, it is not causing sufficient harm to justify taking further action. We will take into account why the breach may have happened, how many people are affected, how they are affected and whether there is a cumulative effect that adds up to an unacceptable situation.

10.3 Not every report about a breach of planning control justifies further action. To help us deal with more pressing complaints we will following a case review close complaints where the alleged breach is acceptable without planning conditions or where the impact is minimal.

11 How do we seek to resolve a breach of planning control?

- 11.1 If we decide that there has been a breach of planning control that should be pursued further then in the first instance we will:
- Ask for things to be put back the way they should be; or
 - Without prejudice, invite an application for the unauthorised development if it is considered possible that planning permission might be granted, normally giving 28 days for its submission; or
 - Try to resolve the situation through negotiation, with the subject of the complaint, without allowing the matter to become protracted. This may mean agreeing a compromise or partial change that the Council is content address the issues identified. It is at the Council's discretion to decide whether this would be sufficient.
- 11.2 Where a retrospective planning application has been asked for, the Council will normally wait a reasonable period for it to be submitted and for its determination before taking further enforcement action. However, where it appears that the progress of the application is being deliberately held up by the applicant or there is no prospect of planning permission being granted, enforcement action may be initiated without delay.
- 11.3 If a breach of planning control is not resolved through negotiation, an invitation to submit an application is declined or a retrospective planning application is refused, our next steps will be:
- To consider the expediency of taking formal enforcement action;
 - To take into account the advice contained within the local development plan and other relevant policy publications
- 11.4 On occasion we will decide at this point not to try to remove or change everything about an unauthorised development. There may be certain elements of the development that can be brought under control without further delay, such as the hours of use or the position of a window. If these are the things that are really important we may agree to these changes and not pursue other less important matters.
- 11.5 If a breach of planning control occurs that requires formal action, the Council may issue an Enforcement Notice or other relevant notice as soon as practicable. The recipient of an Enforcement Notice has the right to lodge an appeal to the Planning Appeals Commission within 28 days following receipt of the notice. It may be a

matter of months before the appeal can be heard. If no appeal is lodged, the Notice takes effect no less than 28 days following its date of issue; the date will be clearly specified on the Notice.

- 11.6 Where an Enforcement Notice is issued it will include requirements for remedying the breach of planning control and a period for compliance. Failure to comply with the requirements of an Enforcement Notice within the specified compliance period is a criminal offence, liable to prosecution in the Magistrates Court (subject to a maximum fine of £100,000). In cases of severe harm the Council can apply for an Injunction in the High Court.

12 Types of Enforcement Notices we can serve

- 12.1 There are a variety of notices available to the Council under the provisions of the 2011 Act which relates to a number of specific contraventions. The list below identifies the types of notices which tend to be used most frequently in practice and for further information on other notices you may wish to visit the Department for Infrastructure's website [Enforcement Practice Note 2 Legislative Framework](#) .
- 12.2 **Temporary stop notice:**
Sections 135 and 136 of the 2011 Act deals with the issuing, serving and restrictions of a temporary stop notice, while section 137 sets out the offences a person or persons will commit if they contravene a temporary stop notice.
- 12.3 Section 135 of the 2011 Act enables a council to issue and serve a temporary stop notice to halt a breach of planning control when it is expedient that the activity is stopped immediately. A council has 28 days to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue. A temporary stop notice enables a council to prevent a continuing breach of planning control at an early stage without first having to issue an enforcement notice.
- 12.4 Under Section 135(1) of the 2011 Act temporary stop notices issued and served under section 135 do not prohibit a person from continuing to use any building, caravan or other structure situated on land to which the temporary stop notice relates as that person's permanent residence. A temporary stop notice does not prohibit other activities which the Department can specify in regulations. They cannot be issued for development or activities where the time limits for enforcement have passed (section 136(2)).

- 12.5 However, section 136 (2) does not prevent a temporary stop notice prohibiting activity consisting of or incidental to buildings, engineering, mining or other operations or the deposit of refuse or waste materials (section 136(3)) 3 . Only one notice can be issued for an activity unless some other enforcement action is taken. A copy of the Temporary Stop Notice must be displayed on the land.
- 12.6 Under section 137 of the 2011 Act it is an offence for any person to contravene a temporary stop notice after a site notice has been displayed or the temporary stop notice has been served on that person. A person convicted of an offence under section 137 will be liable on summary conviction to a fine not exceeding £100,000 or on conviction on indictment to a fine.
- 12.7 **Enforcement notice:**
Section 138 of the 2011 Act provides a council with the legislative authority to issue and serve an enforcement notice where it appears to it that there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations.
- 12.8 An enforcement notice must be served within defined time periods on the owner or occupier of the land to which the notice relates and on any other person with an estate in the land i.e. not more than 28 days after its date of issue and not less than 28 days before the date specified in it as the date on which it is to take effect. Under Section 147 it is an offence not to comply with the requirements of the enforcement notice within the period specified.
- 12.9 **Stop notice:**
Section 150 of the 2011 Act enables a council to serve a stop notice which can prohibit almost immediately any activity to which the related enforcement notice refers. A stop notice can only be served at the same time or after an enforcement notice is served and when the council considers it expedient that any relevant activity should be stopped before the expiry of the period to comply with an enforcement notice. It must refer to the enforcement notice to which it relates and must have a copy of that notice attached to it.
- 12.10 A stop notice cannot be served independently or where the enforcement notice has taken effect. A stop notice will not take effect until such date as it may specify. It is an offence to contravene a stop notice after it has been served and the maximum level of fine is £100,000 on summary conviction or a fine on conviction on indictment. The courts are required to take account of any financial benefits which has accrued, or which appear likely to accrue as a result of the offence. The Council can at any time withdraw a stop notice, without prejudicing its power to serve another.

12.11 **Breach of condition notice:**

Section 152 of the 2011 Act provides a council with the legislative authority to serve a breach of condition notice where a condition has been breached. Non-compliance with a breach of condition notice within the specified time period is an offence and the person responsible shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale which is currently £1000.

12.12 **Listed building enforcement notice:**

Section 157 of the 2011 Act provides a council with the legislative authority to issue and serve a listed building enforcement notice where it appears that unauthorised works have been or are being executed to a listed building, without listed building consent, and that it is considered expedient to issue such a notice having regard to the effect of the works on the character of the building as one of special architectural or historic interest. A listed building enforcement notice can be also issued and served if conditions associated with an LBC are not being adhered to. The enforcement notice must set out the steps to be taken to remedy the breach and the timeframe allowed.

12.13 **Conservation area enforcement notice:**

Section 157 of the 2011 Act as modified by Regulation 15 and Schedule 2 of the Planning (Conservation Areas) (Demolition) Regulations (Northern Ireland) 2015, provides a council with the legislative authority to issue and serve a conservation area enforcement notice where it appears that unauthorised works have been or are being executed to a building in a conservation area, without conservation area consent, and that it is considered expedient to issue such a notice having regard to the effect of the works on the character or appearance of the conservation area in which the building is situated. A conservation area enforcement notice can be also issued and served if conditions associated with the conservation area consent are not being adhered to. The enforcement notice must set out the steps to be taken to remedy the breach and the timeframe allowed.

12.14 **Protection of trees subject to a Tree Preservation Order:**

Section 164 of the 2011 Act allows a council to enforce the duty to replace trees subject to a Tree Preservation Order. A council may serve a notice if it appears that the provisions of Section 125 (i.e. the replacement of trees subject to a Tree Preservation Order) or any conditions of a consent given under a tree preservation order are not being complied with for any tree / trees in its district. Such a notice can only be served within 5 years from the date of the alleged failure to comply with the provisions of section 125 or the conditions of the consent. The notice must specify a period at the end of which it takes effect and this is to be no less than 28 days beginning with the date of the notice being served. Section 165 sets out specific grounds and methods of appeal against enforcement notices issued under section

164 in relation to trees. Any person who contravenes a tree preservation order shall be guilty of an offence and will be liable to a fine in accordance with Section 126.

12.15 Notice to replant a tree / trees in conservation areas:

Section 167 of the 2011 Act places a duty on an owner of land to replace trees that are removed in a conservation area. Section 164 allows a council to enforce the duty to replace trees in conservation areas. The Council may serve a notice if it appears that an owner has not replaced the trees removed in a conservation area, within 5 years from the date of the alleged removal of the tree / trees. The notice must specify a period at the end of which it takes effect and this is to be no less than 28 days beginning from the date of the notice being served. Any person who contravenes a notice to replant a tree / trees in a conservation area shall be guilty of an offence and will be liable to a fine in accordance with Section 126.

12.16 Advertisement control:

Section 175 of the 2011 Act allows a council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations made under Section 130 (i.e. control of advertisements), a person is liable to a fine not exceeding level 4 of the standard scale (£2500). In the case of a continuing offence, the fine will not exceed one tenth of level 4 (£25) for each day during which the offence continues after conviction. The defendant may be a landowner / occupier or those whose advertisement is being displayed.

12.17 Planning contravention notice:

Section 133 of the 2011 Act empowers a council to request additional information about activities on land where it suspects a breach of planning control has occurred. This encourages dialogue with any persons thought to be in breach of planning control and to secure their co-operation in taking corrective action. Under Section 134, failure to comply with a planning contravention notice within 21 days, which may require the person on whom it is served to give the required information, is an offence. A person guilty of this offence shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale (£5000). To make a false or misleading statement (either intentionally or recklessly) in response to a planning contravention notice is also an offence with the same level of fine possible on conviction.

12.18 Submission notice:

Section 43 of the 2011 Act provides a council with the legislative authority to issue a submission notice requiring a retrospective planning application to be submitted within 28 days from the service of the notice, where it appears that a development has been carried out without planning permission. The notice must be served within 5 years of the date upon which the development was begun. It is an offence not to comply with the notice in the time specified in the notice. A person guilty of this offence, shall be liable on summary conviction to a fine not exceeding level 3 on the

standard scale (£1000). If following conviction an application is not made the person is guilty of a further offence and shall be liable on summary conviction to a fine not exceeding one tenth of level 3 on the standard rate (£100) for each day following the first conviction on which the offence continues.

12.19 **Information as to estates in land:**

Section 240 of the 2011 Act gives a council the authority to make an order or issue or serve a notice (or other document) in writing, requiring the submission of certain information regarding the ownership or the use of premises within 21 days of serving the notice or a longer period if specified on the notice. A person who fails to provide the information requested within the period specified shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale (£1000). The giving of false information knowingly is also an offence, and the person shall be liable on summary conviction to a fine not exceeding the statutory maximum; on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

13 What happens when we take formal action?

- 13.1 A formal Enforcement Notice will be served on the owner of the property along with any other party with a legal interest in the land or building in question. The Enforcement Notice will specify what action is required to remedy the breach and will give a period for compliance.
- 13.2 The recipient of the Enforcement Notice has 28 days to appeal against the notice to the Planning Appeals Commission. Where an appeal is lodged, we can take no further action until the appeal has been decided. It is not unusual for the appeal process to take several months.
- 13.3 We will always vigorously defend any appeal but if it is allowed (i.e. if the appellant wins), we can take no further action. If it is dismissed however, the Enforcement Notice will take effect, although the Commissioner can amend its requirements, including the period for compliance.
- 13.4 It is a criminal offence not to comply with an Enforcement Notice once the compliance period has passed. If the notice is not complied with the Council will consider prosecution. However, such action does require evidence to prove the offence is being committed by a named individual or company 'beyond reasonable doubt'. Collecting this evidence can sometimes be a lengthy and time-consuming exercise and in some cases pre-trial delays may be unavoidable.

- 13.5 The City Council will comply with the provisions of the **Police and Criminal Evidence (Northern Ireland) Order 1989** when interviewing persons suspected of a criminal offence.

14 Planning Immunity

- 14.1. When considering enforcement action, the Council will bear in mind the statutory time limits for taking enforcement action as set out in Section 132 of the Act. Where there has been a breach of planning control consisting of the carrying out of building, engineering, mining or other operations in, on, over or under land, without planning permission, no enforcement action may be taken after the end of the period of 5 years beginning with the date on which the use commenced or operations the operations were substantially completed.
- 14.2. Under planning legislation, a breach of planning control that has been in existence for more than five years is immune from enforcement action, i.e. it is lawful. If, through discussions with the landowner and other interested parties, it appears that the alleged breach might be lawful, then an alleged offender may choose to submit an application for a Certificate of Lawfulness.
- 14.3. Such applications are considered on the facts of the case and the relevant test to be applied is 'the balance of probabilities'. While on occasion applications can be delayed due to difficulties in obtaining evidence, the Council will endeavour not to allow the matter to become protracted. Where a Certificate of Lawfulness is submitted, the enforcement case will usually remain open until it is demonstrated the development is lawful.

15 A breach of planning control that requires immediate action

- 15.1. When we consider there is a breach of planning control which is causing immediate harm then we may issue a Stop Notice or Temporary Stop Notice, which should bring about the immediate cessation of certain types of unauthorised works. Before taking such action, the Council will consider that any costs incurred by the developer by having to stop works are fully considered and weighed against the harm being caused. It is more likely that this will be used in cases where there is an immediate threat to assets of acknowledged environmental importance.

16 The Council's planning enforcement priorities

- 16.1. The Council will investigate all alleged breaches of planning control. However, when determining what, if any, action is to be taken, priority will be given to those breaches where, in the Council's opinion, the greatest harm is likely to be caused.
- 16.2. The priority given is determined by the guiding principle that any action in response to a breach of planning control should be proportionate to the harm it causes. The priorities which reflect this principle are as follows:-

Priority 1 – works resulting in public danger or development which may result in permanent damage to the environment. For example: demolition of or works to a listed building, removal of, damage to or works to trees protected by a Tree Preservation Order, demolition of a building in a conservation area, and commencement of building operations without permission.

Priority 2 – Unauthorised operational development, change of use, non-compliance with conditions of a planning approval (unless they relate to serious amenity issues in which case it may fall into Priority 1).

Priority 3 – Minor breaches that can be regularised for example domestic sheds, fences, extensions.

Priority 4 – Advertisements

Aim	Priority			
	1	2	3	4
Register and allocate to Case officer	Immediate background/history check	90% Within 3 working days	90% Within 3 working day	90% Within 3 working day
Site visit (date following registration)	90% Within 3 working day	90% Within 15 working days	90% Within 15 working days	90% Within 20 working days
Discuss and agree a course of action	90% Within 5 working days of the site visit	90% Within 30 working days	90% Within 40 working days	90% Within 40 working days
Commence legal action or resolve	As soon as possible if irreversible	70% Within 39 weeks	70% Within 39 weeks	70% Within 39 weeks

- 16.3. The above list is not exhaustive and is for guidance only. It is ultimately the responsibility of the Council's Planning Enforcement Team to prioritise cases taking

account of the nature of the breach and the harm being caused or likely to be caused.

- 16.4. The priority given is reflected in the timescales against which performance is measured i.e. high priority cases have shorter timescales.
- 16.5. It is important to note that the vast majority of breaches of planning control are resolved informally through negotiation with the owner/occupier or through the submission and consideration of a retrospective planning application.
- 16.6. The speed at which a breach of planning control can be resolved will vary depending on the complexity of the individual case and general workloads. Some complex cases can however take a significant period of time due to the nature of the investigative process.

17 Appeals

- 17.1. Under the provisions of the Planning Act (Northern Ireland) 2011, an appeal may be lodged with the Planning Appeals Commission (PAC) against an Enforcement Notice, a Listed Building Enforcement Notice, and a Section 164 Notice (replacement of trees). There is no right of appeal against a Stop Notice, Temporary Stop Notice or Breach of Condition Notice. The timescale for hearing an appeal and issuing a determination is a matter for the Planning Appeals Commission. Additional information on the Planning Appeals Process can be obtained from the PAC website www.pacni.gov.uk.
- 17.2. When an appeal is pending, enforcement action is put on hold as the enforcement notices referred to above shall have no effect pending the final determination or the withdrawal of an appeal.

18 Legal Action

18.1. **Summons**

Any person who contravenes or causes or permits the contravention of the provisions of an Enforcement Notice after it has been served on them or a Site Notice displayed is guilty of an offence. Anyone guilty of contravening a Notice is liable to a fine upon summary conviction. Whether or not to proceed with a summons action will depend on the merits of the case and degree of harm caused by the development.

18.2. Injunctions

Section 156 of the 2011 Act gives a council the power to apply to the courts for an injunction to restrain any actual or apprehended breach of planning control when the Council considers it necessary or expedient. The power to apply to the courts for an injunction to restrain any acknowledged or apprehended contravention also applies in relation to unauthorised demolition or works to a listed building or failing to comply with any condition attached to a listed building consent, contravention of a tree preservation order and certain acts in respect of trees in a conservation area; or Section 76(6) allows a council to seek an injunction regarding a restriction or requirement imposed under a planning agreement.

18.3. Statutory Charges

This Registry provides purchasers of land with a method of checking whether a property is affected by certain statutory restrictions which could not easily be discovered otherwise. These restrictions, which for the most part are created by or in favour of government departments or local authorities, include for example, matters relating to planning permission or tree preservation orders.

An Enforcement Notice will result in a charge on your land which will have implications for conveyancing, sales and mortgages.

19 Communication

19.1. The Enforcement Team will not provide a routine commentary on progress in dealing with cases as this would require resources that are best used pursuing investigations.

19.2. The Council does not enter into correspondence with a complainant other than to confirm that a case has been opened and then at the conclusion of the case to inform the complainant of the outcome of the investigation. We do not provide updates of investigations. This practice is not to be unhelpful but is due to the restrictions imposed on us by the Data Protection Act 2018 (NI) and the Environmental Information Regulations 2004. The Council is limited to the information that can be released in order to prevent an enforcement investigation being prejudiced and to safeguard the rights of individuals.

19.3. Any queries on specific cases should be directed to the Planning Enforcement Team Officers, who can be contacted as follows:

By telephone on: 028 90500510

By email at: planning@belfastcity.gov.uk

Or in writing at: Cecil Ward Building, 4-10 Linenhall Street, Belfast, BT1 5GS

Belfast Planning Service

Belfast City Council
Cecil Ward Building
4-10 Linenhall Street
Belfast BT2 8BP

 www.belfastcity.gov.uk/LDP

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 Belfast City Council



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